IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

SATURDAY, THE 1ST DECEMBER 2007 / 10TH AGRAHAYANA 1929

WP(C).No. 36270 of 2003(P)

PETITIONER:

RAMACHANDRAN P.,
MANAGER, VOCATIONAL HIGHER SECONDARY SCHOOL,
NADUVATTOM P.O., PALLIPAD, HARIPAD,ALAPPUZHA DIST.

BY ADV. SRI.BIJI MATHEW
SRI.S.BALAKRISHNAN CHETTIAR

RESPONDENTS:
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1. **THE SECRETARY TO GOVERNMENT,**
   GENERAL EDUCATION DEPARTMENT, GOVERNMENT OF KERALA
   SECRETARIATE, THIRUVANANTHAPURAM.

2. **DEPUTY DIRECTOR OF EDUCATION,**
   ALAPPUZHA DISTRICT.

3. **R.SREELATHA, W/O. GOPINATHAN,**
   NJADIKAL HOUSE, AYAPARAMBU P.O., VIA. HARIPAD,
   ALAPPUZHA DIST.

BY ADV. SRI.P.S.KRISHNA PILLAI
GOVERNMENT PLEADER SMT.M.R.SREELATHA

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 01/11/2007, ALONG WITH WPC NO. 2826 OF 2004 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C) NO.36270/2003

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE REPRESENTATION DT. NIL RECEIVED ON 27.9.02.

EXT.P2:- COPY OF THE REPLY FROM THE EDUCATIONAL DIRECTOR ADDRESSED OT THE MOTHER OF THE 3RD RESPONDENT DT. 17.7.92.

EXT.P3:- COPY OF THE JUDGMENT DT. 5.11.02 IN OP. NO.32414 OF 02.

EXT.P4:- COPY OF THE ORDER PASSED BY THE DEPUTY DIRECTOR DT. 23.1.03 NO.C2-23963/02.

EXT.P5:- COPY OF THE JUDGMENT IN OP. 4672/03 DT. 5.3.03.

EXT.P6:- COPY OF THE ORDER NO.G.O.(RT) BNO.3251/03 /G.EDN. DT. 14.8.03.

EXT.R3(a):- COPY OF THE REPRESENTATION DT. 22.2.92 BEFORE THE THE MANAGER.

EXT.R3(b):- COPY OF THE REPLY DT. 12.3.92 BY THE IST RESPONDENT.

EXT.R3(c):- COPY OF THE APPLICATION DT. 12.5.93 BEFORETHE THEN MANAGER.

EXT.R3(c)(i):- COPY OF THE POSTAL RECEIPT.

EXT.R3(d):- COPY OF THE REPRESENTATION DT. 7.10.02 BEFORE THE 2ND RESPONDENT.

EXT.R3(e):- COPY OF THE G.O.(P) NO.12/99/P&ARD DT. 24.5.99.

/TRUE COPY/

P.A. TO JUDGE

S.SIRI JAGAN,J

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W.P.(C).Nos.36270 of 2003 & 2826 of 2004

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Dated this the 1st day of December, 2007

JUDGMENT

These two writ petitions relate to inter-se claim between the petitioner in W.P.(C).No.2826/2004 on the one hand and the 4th respondent in that writ petition on the other, for appointment to the post of Full-Time Menial, which arose in the Vocational Higher Secondary School, Naduvattom which is an aided school on 2.12.2002. The Deputy Director of Education, Alappuzha, upheld the claim of the 4th respondent by Ext.P4 order in W.P. (C).No.2826/2004 which was confirmed by the Government by Ext.P5 order. The aggrieved full-time menial is challenging those orders in W.P.(C).No.2826/2004 and the manager of the school is challenging the very same order in W.P.(C). No.36270/2003. The petitioner in W.P.(C).No.2826/2004 was originally appointed as a full-time menial in a temporary vacancy for the period from 24.11.1997 to 9.2.1998 and that appointment was approved by the educational authorities. Therefore, when a vacancy arose on 2.12.2002 he was appointed, recognising his claim under Rule 51 A of the Chapter XIV of the Kerala

Education Rules. This was challenged by the 4th respondent on the ground that she had a better claim for appointment to that post as a claimant under Rule 51 B of the Chapter XIV A of KER for compassionate appointment. The father of the 4th respondent was a U.P.S.A, working in the very same school, who died, while in service, on 1.11.1977. The 4th respondent sought appointment under Rule 51 B as a dependent of the deceased teacher. The 2nd respondent-Deputy Director of Education found that since the petitioner in W.P.(C).No.2826/2004 had relinquished his right for appointment to the said post and the 4th respondent who is a claimant under Rule 51 B is entitled to be appointed to that vacancy and therefore directed the manger to appoint the 4th respondent in that vacancy. The same was challenged before the Government and the Government by Ext.P5 order upheld the order of the Deputy Director. It is thus that the petitioner in W.P.(C).No.2826/2004 and the manager of the school are challenging the original and revisional orders in these two writ petitions.

2. The contention of the petitioner in W.P.(C). No.2826/2004 is that he never relinquished his claim for

appointment to the post of full-time menial at any time and therefore, the orders impugned which are solely based on such relinquishment cannot be upheld. Ext.P3 in W.P.(C). No.2826/2004 is the relinquishment letter. It says Sri.G.Aravindakshan,(the petitioner in then W.P) relinquishes his claim for promotion/appointment as peon from 1.7.2000. Even the 4th respondent disputes the genuineness of this document in her counter affidavit. According to herself that is a concocted document. I am of opinion that even if the same is a genuine document, it cannot be construed as a relinquishment of anything by the petitioner. First of all Ext.P3 does not relinquish the petitioner's claim for appointment to the post of full-time menial. It only relinquishes his claim for promotion as peon with effect from 1.7.2000. As on 1.7.2000 the question of relinquishment by the petitioner to any post does not arise at all because as on that date there was no right for any post which he could have validly relinquished. As on that date the petitioner was not an employee of the school at all. Ext.P3 is dated 1.7.2002. Nobody can relinquish a right with retrospective effect. Further a Division Bench of this Court has in **Mariam**

Koshy v. Jolly Varghese (2007 (4) KLT 803) held that a non-existing right cannot be relinquished. As such only when a vacancy arises a person can relinquish his right to that post. Further a valid relinquishment, the procedure prescribed in Note 2 of Rule 51 A has to be mandatorily followed, which also has not been done in this case and could not have been done since by Ext.P3, on 1.7.2002 the right for promotion with effect from 1.7.2000 is stated to have been relinquished. In the decision of **Nalini v. State of Kerala (2001 (2) KLT 273),** a Division Bench of this Court has held that for a valid relinquishment scrupulous following of the procedure prescribed is mandatory. Here, nobody has a case that as on the date of Ext.P3 the petitioner had any right to any post which he could have validly relinquished and that the procedure prescribed has been followed. Therefore, the very basis of Ext.P4 and P5 is unsustainable.

3. It is not disputed before me that the 4th respondent had never challenged the appointment of the petitioner for the period from 42.11.1997 to 9.2.1998. In fact, the first application for appointment under Rule 51 B filed by the petitioner herself

was admittedly filed only on 7.10.2002 although the 4th respondent relies on some applications filed by her mother in 1992 and 1993. In any event, it is not disputed before me that the 4th respondent had not filed any application for appointment prior to 7.10.2002, by which time the right of the petitioner as a Rule 51 A claimant had already crystallised in view of his approved appointment for the period from 24.11.1997 to 9.2.1998 which stands unchallenged. It is settled law that a right under Rule 51 A would override the right under Rule 51 B. See Deepthy Susan Jacob v. State (1997 (2) KLT 1033) and Manager N.S.S. Karayogam v. Soumya Nair (2005 (2) KLT 867) That being so the petitioner's appointment could not have been validly challenged by the 4th respondent on the ground that she had a better claim as a Rule 51 B claimant.

4. In view of the above discussions, it is abundantly clear that Exts.P4 and P5 in W.P.(C).No.2826/2004 and Exts.P4 and P6 in W.P.(C).No.36270/2003 are unsustainable and therefore the same are hereby quashed. It is clear that the petitioner in W.P.(C).No.2826/2004 is the rightful claimant for appointment to the post of full-time menial in the school of the

3rd respondent with effect from 2.12.2002. The appropriate Educational Officer shall pass appropriate orders approving the appointment of the petitioner in W.P.(C).No.2826/2004, as Full Time Menial with effect from 2.12.2002 within a period of one month from the date when this judgment is produced before him and the monetary benefits due to him shall also be disbursed.

These writ petitions are disposed of accordingly.

S.SIRI JAGAN, JUDGE

dvs